

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREG WILLIAM FANTER,

Defendant.

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8:08CR473

ORDER

This matter is set for trial commencing May 5, 2009. On April 27, 2009, Greg William Fanter filed a motion (Doc. [71](#)) for an order authorizing a psychiatric and/or psychological examination pursuant to [18 U.S.C. § 4241\(b\)](#). An examination is requested, based on counsel's unsworn allegations that the defendant "has made certain allegations and representations," including "allegations of a paranoid and delusional nature."

The ability to reconsider the issue of competency "at any time," see [18 U.S.C. 4241\(a\)](#), does not mean that the court must hold a hearing any time the defense asks for one. [United States v. Diaz-Gaudarama, 2009 WL 673997](#) at *2, Case No. 4:07CR0703 (S.D. Ind., Mar. 13, 2009). The ordering of such an examination "is not a perfunctory or ministerial act on the district court's part." [United States v. Nicholson, 550 F.2d 502, 504 \(8th Cir. 1977\)](#). "It would be a misuse of the statute for such motions to be granted 'so routinely that the statute amounts to no more than a provision for an automatic continuance on the defendant's request.'" [United States v. Metcalfe, 698 F.2d 877, 881 \(7th Cir.\), cert. denied, 461 U.S. 910 \(1983\)](#) (regarding the predecessor statute to § 4241). However, the permissible reasons for denying such a motion are narrowly circumscribed to lack of

reasonable cause, frivolity or lack of good faith. Id.; see also United States v. DeGarmo, 2004 WL 1070678, Case No. 4:03CR3100 (D. Neb., May 12, 2004).

The court finds that the conclusory allegations made in Mr. Fanter's motion do not support a finding that there is reasonable cause to believe he may presently be suffering from a mental disease or defect rendering him mentally incompetent to understand the nature and consequences of the proceedings against him or to assist properly in his defense. See 18 U.S.C. § 4241(a).

IT IS ORDERED:

1. Defendant's Motion for an order authorizing a psychiatric and/or psychological examination pursuant to 18 U.S.C. § 4241 is denied.

2. Defendant's Motion to Continue Trial Date is denied. The trial of this matter remains set for Tuesday, May 5, 2009.

Pursuant to NECrimR 57.2(a), a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" no later than **12:00 noon on Thursday, April 28, 2009**.

DATED April 28, 2009.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**